



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201010030

DEC 17 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:TZ

Legend:

Taxpayer A	=	***
Taxpayer B	=	***
IRA U	=	*** ***
IRA V	=	*** ***
IRA W	=	*** ***
IRA X	=	*** ***
IRA Y	=	*** ***
IRA Z	=	*** ***
Amount U	=	***
Amount V	=	***
Amount W	=	***
Amount X	=	***

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Amount Y = ***

Amount Z = ***

Amount T = ***

Financial
Advisor R = ***Tax
Preparer F = ***

Year 1 = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Company A = ***

Company B = ***

Company C = ***

Company D = ***

Dear ***,

This is in response to a request submitted on your behalf by your authorized representative dated May 21, 2009, as supplemented by correspondence dated August 31, 2009, October 21, 2009 and November 6, 2009 in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayer A, age 81 at the time of the transactions, and his wife, Taxpayer B, age 82 at the time of the transactions (collectively, the "Taxpayers"), represent that during Year 1, a series of distributions were made from their IRAs held by Companies A, B, and C. Taxpayer A was the holder of IRAs U, W, and Y. Taxpayer B was the holder of IRAs V, X, and Z. The Taxpayers assert that their failures to accomplish rollovers within the 60-day period prescribed by section 408(d)(3) was due to the misconduct of their financial advisor, who converted the distributed amounts to his personal use or otherwise used the funds in a manner that was unauthorized and not directed by the Taxpayers.

The Taxpayers represent that prior to Year 1 they hired Financial Advisor R to handle their investments. The Taxpayers represent that Financial Advisor R had developed a close relationship with them having worked with them for many years and that Taxpayer A had thought of Financial Advisor R as a son. The Taxpayers further represent that during Year 1, Financial Advisor R directed or otherwise orchestrated withdrawals from IRAs U through Z in Amounts U through Z, respectively. The total withdrawals from IRAs U through Z during Year 1 are represented to total Amount T. Taxpayers A and B represent that Financial Advisor R advised them that the withdrawals would be rolled over into another eligible retirement account, which would have, as a part of its underlying investments, certain high-rate return debentures. The Taxpayers represent that it was their intention that the distributions from IRAs U through Z be rolled over into IRAs.

With respect to the distributions from IRA W and IRA X, the Taxpayers executed surrender forms on Date 1 that directed that the distribution checks be made out to Company D, an entity with which Financial Advisor R was affiliated, with the understanding that Financial Advisor R would deposit the checks in other IRAs. With respect to the distributions from IRAs U and V, Taxpayers executed liquidation forms on Date 2, received distribution checks and then provided the funds to Financial Advisor R for reinvestment in IRAs. The Taxpayers assert that Financial Advisor R effected the withdrawals from IRAs Y and Z without their knowledge or participation. The Taxpayers state that they did not read the withdrawal forms and based on their affection for and trust in Financial Advisor R, they relied exclusively on his explanation of the transactions. The Taxpayers further state that Financial Advisor R reassured them that there were no tax consequences resulting from the withdrawals, which, Taxpayers were assured, would be rolled over into other IRA accounts.

The Taxpayers represent that they and their son eventually became suspicious of Financial Advisor R after he began exhibiting behavior out of character from that which had been observed by the Taxpayers for almost two decades, including repeatedly failing to return phone calls, providing continued excuses as to why he could not meet with Taxpayers, and ceasing to provide Taxpayers with a monthly statement/summary of their investments that he was handling after Date 3. The Taxpayers confronted

Financial Advisor R with their suspicions. Though he was ambiguous about what had happened to their money, Financial Advisor R promised full repayment and reimbursed Taxpayers with a series of repayments beginning on Date 4, 2007 and ending on Date 6, 2009 for the full amount of the distributions from IRAs U through Z totaling Amount T. The Taxpayers deposited the payments they received from Financial Advisor R into a regular checking account. The Taxpayers emphasize that their initial concerns focused entirely upon attempting to recover their retirement funds and did not focus on any potential tax consequences of Financial Advisor R's actions, or depositing the payments into a checking account.

The Taxpayers further state that while they were unsure as to what Financial Advisor R had done with the money in their accounts before repaying them, they were unaware that the distributions had not been rolled over into other IRA accounts until they received correspondence from the Service, dated Date 5 notifying them that the distributions had been taxable. The Taxpayers represent that they did not receive Forms 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., from Companies A and B and C. Prior to their receipt of the correspondence from the Service on Date 5, Taxpayers represent that they did not understand that the actions taken by Financial Advisor R with respect to their funds also had income tax implications, but instead, had been focused entirely upon recovering the amounts in their accounts from Financial Advisor R.

The Taxpayers represent that, upon learning on Date 5 of the taxable nature of the withdrawals, they immediately contacted their tax preparer, Tax Preparer F, and turned the matter over to him to handle. After Tax Preparer F failed to achieve any type of resolution for them, Taxpayers hired legal counsel to address the issues raised by the correspondence from the Service dated Date 5, which culminated in the submission of this ruling request. The Taxpayers represent that they have not used the money recovered from Financial Advisor R for any other purposes.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amounts U through Z.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

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Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

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The information presented and the documentation submitted by the Taxpayers is consistent with their assertion that their failure to accomplish a timely rollover was caused by the fact that Financial Advisor R converted their funds to his personal use.

Accordingly, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amounts U through Z from IRAs U through Z. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amounts U, W and Y into a rollover IRA. Taxpayer B is granted a period of 60 days from the issuance of this ruling letter to contribute Amounts V, X and Z into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amounts U through Z will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not address or authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact ***** at ***-***-****. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

Lauren B. Washburn
for Donzell H. Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc:
